

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

F. (No. 2)

v.

WHO

140th Session

Judgment No. 5025

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Ms J. F. against the World Health Organization (WHO) on 28 April 2023 and corrected on 15 June 2023, WHO's reply of 25 September 2023, the complainant's rejoinder of 24 November 2023, WHO's surrejoinder of 26 February 2024, the complainant's additional submissions of 2 April 2024 and WHO's final comments thereon of 9 July 2024;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

Considering that the facts of the case may be summed up as follows:

The complainant challenges the decision to rescind an offer of reassignment made pursuant to a call for expression of interest and the decision to cancel a selection procedure.

The complainant first joined WHO in 1997 serving under various capacities until 2008. In 2015, she joined WHO again working in its Regional Office for Europe (EURO) in Copenhagen, Denmark. In February 2017, she was appointed to the P-6 position of Coordinator, Diabetes, Noncommunicable Diseases (NCD) in the Health Promotion Division.

In early 2020, EURO was reorganised to optimise the use of available resources to ensure financial sustainability and establish a structure with fewer hierarchical layers. In February 2020, the Regional Director informed the complainant and other staff members that, in the context of the reorganisation, all current P-6 positions would be abolished, new P-5 positions may be created, and qualified staff members would be considered for reassignment to these positions. Staff members were encouraged to seek other employment opportunities outside EURO.

On 9 November 2020, the complainant was informed that her P-6 position would be abolished.

In the meantime, the complainant applied for the P-5 position of Medical Officer, NCD, in Geneva, Switzerland, which was advertised through the expression of interest procedure in the summer of 2020. On 24 September 2020, she received an offer of appointment, which she accepted the following day. On 27 November 2020, she received her reassignment letter, by email, which stated inter alia that she was reassigned at grade P-5, effective 1 December 2020 and provided detailed information on her benefits, entitlements and duties. She was asked to return a signed copy of the letter. She replied that same day asking for clarifications regarding in particular her duties, salary and the type of contract. On 30 November 2020, the Administration indicated that it would reply soon. The complainant replied almost immediately that she understood that she should not sign the reassignment letter pending a response in case any part of the letter needed adjustment. Later that day, she was informed orally that her reassignment was rescinded because the expression of interest procedure was cancelled. This was confirmed in writing on 21 December 2020. On that same day, she was also notified that, in the context of the reassignment procedure established pursuant to the reorganisation of EURO in Copenhagen, she was matched to the position of Regional Medical Officer in Copenhagen.

In mid-February 2021, she submitted a request for administrative review of the 21 December 2020 decision to rescind the offer to reassign her to the position of Medical Officer, NCD, based in Geneva. Her request was rejected on 25 June 2021.

On 24 October 2021, she filed an appeal with the Global Board of Appeal (GBA) that was registered under appeal No. 167. She asked that the contested decision of 30 November 2020 to rescind the decision to reassign her to the position of Medical Officer, NCD, in Geneva be set aside, that she be reassigned to that position and that she be awarded moral damages alleging that she had a binding contract for that position, that WHO breached a promise made to her by rescinding the offer of appointment, and that it acted in breach of the principle of non-retroactivity, of its duty of care and of its obligation to act in good faith. As a result of that decision, her career and reputation were harmed. She also sought an award of costs and interests.

In the meantime, in January 2021, after the expression of interest procedure for the position of Medical Officer, NCD, in Geneva was cancelled, WHO published a vacancy notice (FT 2005302) advertising the position of Medical Officer, NCD, in Geneva. She applied and was shortlisted together with two external candidates. The Selection Panel recommended her as the only suitable candidate. However, on 15 July 2021, she was informed that the vacancy had been cancelled and that a vacancy for a similar position would be advertised in the near future. In September 2021, the complainant submitted a request for administrative review of the 15 July 2021 decision. WHO dismissed the request, in November 2021, explaining that the selection procedure was cancelled and the position re-advertised because the decision-maker should ideally be presented with three proposed candidates. In the present case, the decision-maker was provided with the complainant's name only.

In early January 2022, she filed an appeal with the GBA that was registered under appeal No. 175. She asked that the contested decision of 2 November 2021 be set aside and that the initial selection procedure be resumed under the same vacancy notice advertised in FT 2005302 or, alternatively, that she be reassigned to a mutually agreed P-5 position (while maintaining her P-6 grade *ad personam*). She also sought an award of moral damages and costs, as well as interest.

In its report of 20 July 2022, the GBA, which had decided to join both appeals, recommended, firstly, to allow in part appeal No. 167 filed against the rescission of the offer of reassignment. It found that no

binding contract existed, that no promise was made, and that the principle of retroactivity did not apply. However, it considered that the late rescission of the offer of reassignment breached WHO's duty of care warranting the award of moral damages. It therefore recommended awarding the complainant 7,000 Swiss francs in moral damages and reimbursing her legal fees up to 2,000 Swiss francs upon production of invoices and proof of payment. Secondly, the GBA recommended dismissing appeal No. 175 filed against the decision to confirm the cancellation of the selection procedure for the Medical Officer's position as advertised in vacancy notice FT 2005302. According to the GBA, the decision to cancel the selection procedure complied with the paramount consideration for selection and was neither arbitrary nor an abuse of authority. In its view, WHO respected its duty of care and acted in good faith.

By a decision of 26 January 2023, the Director-General notified the complainant of his decision to endorse the GBA's recommendations. This is the impugned decision.

The complainant asks the Tribunal to quash the impugned decision, except regarding the award of 7,000 Swiss francs in moral damages and 2,000 Swiss francs in legal fees. She asks the Tribunal to order WHO to resume the selection procedure for the position of Medical Officer, NCD, as of 8 June 2021, under the same vacancy notice as advertised in FT 2005302, applying the rules that were in force when the vacancy notice was first published and considering only the applicants, who submitted their applications within the time limit specified in the original vacancy notice. She also seeks an award of moral damages and costs together with interest at a rate of 5 per cent per annum on all sums awarded from 30 November 2020 (the date on which her reassignment to the Medical Officer's position was rescinded) until full payment of all awarded sums. Lastly, she asks the Tribunal to grant her such other redress that it deems necessary, just and fair.

WHO asks the Tribunal to reject the complaint as devoid of merit.

CONSIDERATIONS

1. The complainant's application to join this complaint with her first complaint is rejected for the reasons the Tribunal has given in consideration 1 of Judgment 5024, also delivered this day.

2. Inasmuch as the issues raised in this complaint involve decisions concerning the reassignment and the cancellation of a selection process, the Tribunal recalls its case law in consideration 9 of Judgment 3647, which recognises that the executive head of an international organization may cancel a competition in its interest if, among other reasons, it becomes apparent that the competition will not enable the post concerned to be filled, and, if need be, decide to hold a new competition on different terms. However, the condition relating to the interests of the organization must actually be met, so that the cancellation of the initial process is based on a legitimate reason as arbitrary decision-making is unacceptable. The case law also states, in consideration 6 of Judgment 4903, for example, that in matters of appointment, the choice of the candidate to be appointed lies within the discretion of the authority competent to make the appointment within the organization concerned. Such a decision is therefore subject to only limited review by the Tribunal and may be set aside only if it was taken without authority or in breach of a rule of form or of procedure, or if it was based on a mistake of fact or of law, or if some material fact was overlooked, or if there was abuse of authority, or if a clearly wrong conclusion was drawn from the evidence. As a result, a person who has applied for a post that an organization has decided to fill by a competition and whose application is ultimately unsuccessful must prove that the selection procedure was tainted by a serious defect. The Tribunal also recalled that, in relation to competitions, it is not its role to replace the assessment made by the competent selection bodies with its own assessment.

3. The complainant challenges the aspects of the impugned decision with respect to appeal No. 167 in which she had contested the decision to rescind her reassignment to the P-5 position of Medical

Officer, NCD, in Geneva, on grounds which the Tribunal sets out as follows:

- (i) The Director-General erred by holding that the rescission of her reassignment did not breach a binding contract between the parties, as all essential terms for her appointment to the position had been settled.
- (ii) The Director-General erred by not holding that the rescission of her selection for the position breached a binding promise.
- (iii) The Director-General erred by not holding that the decision to rescind her selection to fill the position did not violate the principles of non-retroactivity and estoppel.
- (iv) The Director-General's award of 7,000 Swiss francs in moral damages for WHO's breach of duty of care by informing her of the rescission of her selection only on the day before she was scheduled to take up the appointment did not adequately remedy WHO's bad faith and breach of its duty of care.

4. As to ground (i), WHO does not put in issue the complainant's right to argue that there was a binding contract potentially enforceable in these proceedings. While the Tribunal doubts breach of contract has any relevance in a case such as the present, it will nonetheless deal with the argument as advanced by the complainant.

5. To support ground (i), namely the decision to rescind her reassignment to the position of Medical Officer, NCD, in Geneva, the complainant cites consideration 14 of Judgment 2592 that "[...] there is a binding contract if there is manifest on both sides an intention to contract and if all the essential terms have been settled and if all that remains to be done is a formality which requires no further agreement". She also refers to the Tribunal's decision in Judgment 621 that: "[a] contract is concluded only if both parties have shown contractual intent, all the essential terms are worked out and agreed on, and all that may remain is a formality of a kind requiring no further agreement".

6. The complainant contends (as she did in her internal appeal) that the decision to rescind her reassignment to the post of Medical Officer was unlawful because the parties had taken significant steps for her to undertake her new functions in that post, which steps amounted to a contractual agreement. Accordingly, by the time the Director, Human Resources and Talent Management notified her by telephone at about 20.45 the evening before she was scheduled to assume duties in that position on 1 December 2020, the parties had entered into a binding contract as they had already agreed on all the essential terms. This rendered her signature of the 27 November 2020 reassignment letter a mere formality so that WHO's decision to rescind that agreement was unlawful amounting to a breach of contract.

7. The detailed evidence the complainant provides to support the foregoing contention may be summarized as follows: she applied for the P-5 Medical Officer position in Geneva and was informed, on 24 September 2020, of her selection. She accepted the offer the following day, with full knowledge that the position was at the P-5 level. This signifies that both parties intended to contract and they had reached an agreement on all essential aspects of the contract because in early October 2020 her new Director, in Geneva, announced to staff, external experts and donors/partners that she would be taking up the subject position.

On 23 October 2020, the Human Resources (HR) focal points, the relevant Directors at the Regional Office and at WHO Headquarters in Geneva and her, agreed that she would commence her reassignment from Copenhagen (instead of Geneva) due to the COVID-19 restrictions. On 4 November 2020, HR informed her that a start date on 1 December 2020 had been agreed but that the decision on her personal grade was still pending. The following day, she agreed to the date of transfer. On 6 November 2020, the Regional Director excluded her from the first round of the mapping/matching exercise of the reassignment process (which had resulted from the restructuring process) as she had accepted the Medical Officer's position and approved her transfer. On 9 November 2020, the Regional Office informed her that she would retain her P-6 grade on reassignment on a personal basis and an

administrator requisitioned information technology equipment for her arrival in Geneva.

Later, on 19 November 2020, the HR focal point at WHO Headquarters informed her that the letter would have been issued for her appointment, “effective 1 December 2020 for the P5 position for which [she] w[as] selected [...] [w]e await the [Assistant Director-General, Business Operations (ADG/BOS)]’s decision on [the] retention of [her] personal grade of P6. The letter of appointment [would] be amended retroactively if necessary.” Her new Director scheduled several meetings to begin on 1 December 2020 with staff and external partners.

On 27 November 2020, when she received her reassignment letter, she inquired whether she should add a handwritten note on it as her grade upon reassignment was still under review by the ADG/BOS and had not yet been confirmed. She added that it was her understanding that “if [the retention of grade was] granted, it [could] be retrospectively applied”. She had a farewell party with her team on 30 November 2020 and she did a handover, and completed her performance evaluation on 30 November 2020.

8. In its analysis of this issue, the GBA noted the case law in consideration 14 of Judgment 2592 (referred to in consideration 5 of this judgment). Noting the evidence, the GBA stated that the parties had agreed upon several essential terms up until the communication to the complainant of the reassignment letter on 27 November 2020 after which the complainant requested to have several matters clarified. It considered that some of those matters were mere formalities, but that the matters which related to her step-in-grade, her salary and the retention of her P-6 grade on a personal basis were essential terms upon which the parties had not agreed. Citing as authority consideration 12 of Judgment 1775, the GBA recalled the Tribunal’s statement therein that it regarded remuneration as an essential term of a proposed contract and that no one has an automatic right to any particular step or grade. The GBA thereupon concluded that the questions the complainant raised with the Administration after she received the reassignment letter demonstrated that pending a response from WHO, the parties had not

agreed to all of the essential terms of the reassignment agreement, even though steps had been taken in preparation for her reassignment to the position and that, accordingly, a binding contract had not come into existence at the time that the reassignment was rescinded.

9. WHO's arguments in these proceedings essentially mirror the GBA's reasoning and conclusion, which the Director-General accepted in the impugned decision. However, the complainant argues, in effect, that contrary to the GBA's findings, her step-in-grade, her salary and the retention of her grade on a personal basis were not essential terms of the contract. Referring to Section III.5.9 of the eManual, she states that the retention of a grade on a personal basis on selection to a lower-level position is a separate decision of the ADG/BOS, distinct from the reassignment decision. She argues that the three essential terms, which according to the GBA were unresolved, were actually only one term, which concerned her grade. She further argues that if WHO had considered that her request for clarification meant that the reassignment was not in place, it could have postponed the 1 December 2020 reassignment date.

10. The Tribunal reproduces consideration 12 of Judgment 1775 insofar as its statements therein may be relevant to the present issue:

"12. For the complainant's claim to succeed he must show an unqualified agreement and meeting of minds between the Organization and himself on the essential terms of a contract of employment. The Tribunal is unable to read his telex of 12 March 1993 as anything but a counter-offer on one of the most essential terms of the proposed contract, namely remuneration. Certainly, it cannot be said to be an unqualified acceptance and the fact that it is couched in terms of a claim of right does nothing to change its character; a potential employee does not have an automatic right to any particular grade or step and an offer which specifies one figure of salary cannot be accepted by a claim to a higher figure: see Judgment 228 [...]; the terms of the Organization's telex are fully compatible with the conclusion that the question of salary was still unresolved and subject to further negotiation."

11. Notably, by an email of 27 November 2020, HR forwarded to the complainant her reassignment letter, which included the terms of appointment. It requested the complainant to kindly “indicate the acceptance of [her] Reassignment, and the stated terms and conditions by return e-mail attaching a signed copy of the letter and completed Travel and Relocation Shipment form [...] within five days”. She was also asked to acknowledge receipt of this email and to contact HR if she had any queries.

Insofar as it is relevant to the issue raised in this ground, the complainant replied on 27 November 2020, as follows:

“I understand that the memo for personal retention of P6 grade is still with ADG BOS. Is there a timeline for when this matter will be resolved such as response within 60 days of memo reaching BOS? I understood that it was sent months ago. In the meantime, I received an abolition of post letter from EURO more than two weeks ago which stated that the matter was resolved and confirming that the grade would be retained.

Otherwise, I understand that, if granted, it can be retrospectively applied.

Meanwhile, please advise what, if anything, needs to be added/handwritten on signature to take account of this.

Currently I am on P6 step 5. I see that the proposal otherwise is to place me on P5 step 13 which has a base salary lower than my present one. Is that correct? I thought that the starting base salary had to be at least the same as current. Please advise.”

This reply suggests to the Tribunal that the complainant realized that her remuneration had not been settled at the material time.

In its response of 30 November 2020, HR informed the complainant as follows: “This is to inform you that we are reviewing your questions raised in your email of 27 November 2020 and will reply very soon.” To this, the complainant responded as follows: “Many thanks, much appreciated. I understand that I do not sign pending response in case any sentences in [the] letter need adjustment.” It is apparent to the Tribunal that this was not an unqualified acceptance of the terms of reassignment set out in the assignment letter. Accordingly, the Director-General correctly accepted the GBA’s conclusion that the parties had not entered into a binding contract at the time the complainant’s reassignment to the position of Medical Officer, in Geneva, was rescinded. Ground (i) is therefore unfounded.

12. Regarding ground (ii), the complainant submits that, in violation of the Tribunal's case law, the decision to rescind her reassignment to the position of Medical Officer breached the promise to reassign her. She argues that as she had immediately accepted the offer of reassignment on 25 September 2020, there was a promise to reassign her, and, indeed, the four elements of a promise were met.

13. In consideration 8 of Judgment 4827, the Tribunal recalled that the four elements required for a binding promise to exist are, first, there must be a promise to act or not act, or to allow; second, the promise must come from someone who is competent or deemed competent to make it; third, the breach of the promise would cause injury to the person who relies on it; and fourth, the position in law should not have been altered between the date of the promise and the date on which fulfilment is due. The Tribunal further stated that the third element has two sub-elements. One is that the promisee has relied on the promise and the second is that this reliance has caused injury to the promisee in the event of non-fulfilment of the promise.

14. The complainant submits that these elements were present because she was offered a reassignment to the Medical Officer's position and numerous actions were undertaken to implement it; the reassignment came from the competent authority. She relied on WHO's assurances to her detriment and there were no changes in the rules on reassignment prior to the 25 September 2020, when she accepted it, and 1 December 2020, the date on which she would begin her role.

15. The GBA correctly concluded, in effect, that the offer of appointment/reassignment of 24 September 2020 did not constitute a binding promise to act by WHO, and that, moreover, the reassignment of the complainant to the Medical Officer's position could not have materialized without her consent which she had not yet provided when the offer was rescinded.

16. The Tribunal observes that WHO made the offer of reassignment to the complainant in the reassignment letter communicated to her on 27 November 2020. As the complainant had not yet accepted that offer at the time her selection for the subject post was rescinded there was no binding agreement which could have fixed WHO with liability for its breach.

17. The decision to rescind the complainant's selection was not infected by misuse of authority, as the complainant submits. The complainant provides no evidence from which the Tribunal may conclude that the rescission decision was taken for an improper purpose in the sense stated in consideration 9 of Judgment 3193, that is to say that the decision rested on considerations extraneous to WHO's interests. Additionally, the complainant provides no evidence that WHO acted in bad faith, in the sense stated in consideration 5 of Judgment 4841, with respect to the rescission decision. It follows that the Director-General did not err when he accepted the GBA's conclusion on this issue. Accordingly, ground (ii) is also unfounded.

18. Regarding ground (iii), the complainant contends that the Director-General's decision to rescind her selection for the subject post also breached the principle of non-retroactivity, which forbids an organization from applying retroactively a rule or practice which is unfavourable to staff, especially when it has failed to clearly announce the change to staff in advance. She states that the decision was purportedly based on the Director-General's decision to review WHO Headquarters' expression of interest process for which reassignments were halted.

19. The case law states, in consideration 7 of Judgment 4425, for example, that the principle of non-retroactivity requires that a new administrative practice (which must also include a decision to apply stricter criteria) must be clearly announced to staff prior to its application. The Tribunal held in that case that there was no evidence to support the contention that a decision to change the rules and/or to apply stricter criteria for reimbursement of the cost of type A cures was

announced to EPO staff prior to determining that the complainant was not to be reimbursed for a type A cure.

20. In the present case, the GBA concluded, correctly from the evidence, that the principle of non-retroactivity did not apply as the decision to rescind the complainant's reassignment to the position of Medical Officer was not based upon a practice or rule applied with retroactive effect which adversely affected her rights. It rather resulted from the identification of flaws in the selection process leading to her appointment to the aforementioned position, which could have rendered that process unlawful. The GBA recalled, in effect, that the Director-General, as the executive head of WHO, has discretionary power to review or cancel a decision insofar as he acts in good faith and for good reasons. It is apparent to the Tribunal that what in effect the Director-General did, was to rescind the selection decision, which was made pursuant to rules that were in force at the material time, and instituted a new selection process under new rules. This was not the application of a new rule or practice under which the contested selection was made of which the complainant was not notified in advance, as she suggests. The principle of non-retroactivity is therefore inapplicable, as is the principle of estoppel which the complainant raises in relation to that principle. In the result that ground (iii) is unfounded.

21. The Director-General correctly accepted the GBA's conclusion that by putting on hold and reviewing the expression of interest procedure for the subject selection and rescinding the complainant's selection at such a late stage, WHO, in effect, violated its duty of care towards the complainant thereby causing her moral injury. The Director-General also accepted the GBA's recommendation to award the complainant 7,000 Swiss francs in moral damages, which the complainant challenges in ground (iv).

22. In awarding this quantum as moral damages, having set out the circumstances in which the contested decision was taken, the GBA correctly concluded that the manner in which the complainant's selection was rescinded at such a late stage, upset and discomfited her

and involved significant personal distress and embarrassment among her colleagues and counterparts. The GBA however stated that the complainant had not suffered any professional or career damage as WHO took immediate steps to ensure her continued employment.

23. The complainant submits that this conclusion was erroneous. She argues, in particular, that by it, the GBA and the Director-General overlooked the fact that she was reassigned to a position that was not comparable to either the position she formerly held or that of the Medical Officer position in Geneva; that at the time the impugned decision was taken, the Director-General had received the report of the Advisory Committee on Compensation Claims (ACCC), according to which she suffered a major depressive disorder that resulted in her being placed on sick leave. Further, many colleagues had been informed that she would work as Medical Officer in Geneva, but they were not informed of the reasons for the cancellation of the position, which opened it to speculation that she had done something wrong, and, in all, made her very embarrassed among her colleagues. She additionally states that having been offered the subject position, she was not part of the first round of the ongoing mapping/matching process for reassignment as a result of restructuring and thus was not considered for some positions in the Regional Office in October 2020. This last matter is however irrelevant for determining the quantum of moral damages for the injury which the complainant sustained. Moreover, as WHO submits, the rescission decision was not identified by the ACCC as the cause for the complainant's service-incurred illness and that, in any event, the recognition of her illness as service-incurred led to the reimbursement of her related expenses. Notwithstanding this, and as earlier indicated, bad faith has not been proved, it is quite apparent that an award of 7,000 Swiss francs in moral damages was inadequate compensation for the moral injury the complainant sustained in the circumstances for WHO's breach of its duty of care. The Tribunal determines that the abrupt rescission of her reassignment and the overall context in which the reassignment procedure was conducted could only have been very painful and decides that an award of an additional 20,000 Swiss francs will fairly compensate that breach.

24. Regarding the complainant's challenge to the aspects of the impugned decision with respect to appeal No. 175 against the decision to confirm the cancellation of the selection process for the position advertised in vacancy notice FT 2005302, the Tribunal recalls the applicable general principles stated in consideration 2 of this judgment. It also notes that, in the communication, dated 8 June 2021, in which the Assistant Director-General, Universal Health Coverage, Communicable and Noncommunicable Diseases (ADG/UCN) informed the complainant of the cancellation decision, he relevantly stated as follows:

"The selection process will be cancelled and the position re-advertised, as the decision maker should ideally be presented with 3 proposed candidates, noting that in this case there was only one recommended candidate. In addition, I recommend that greater consideration be given to internal candidates at the short-listing phase, with a more inclusive approach to inviting internal candidates to the written test, noting in this case that only one internal candidate was invited to the written test."

25. The Tribunal sets out as follows the grounds upon which the complainant challenges the impugned decision insofar as it relates to appeal No. 175:

- (i) The Director-General erred by holding that by taking the challenged decision, WHO did not violate the paramount considerations for selection set out particularly in Staff Regulations 4.2 and 4.4 and in the Harmonized Selection Process.
- (ii) The Director-General erred by holding that the challenged decision was not arbitrary and did not constitute an abuse of power.
- (iii) The Director-General erred by holding that the challenged decision did not breach WHO's duty of care and good faith.

26. The Tribunal sets out the following provisions as a precursor to considering these grounds, Staff Regulation 1.2 stated:

"1.2 All staff members are subject to the authority of the Director-General and to assignment by him to any of the activities or offices of the World Health Organization. They are responsible to him in the exercise of their

functions. In principle, the whole time of staff members shall be at the disposal of the Director-General.”

Staff Regulation 4.1 stated:

“4.1 The Director-General shall appoint, transfer, reassign and promote staff members as required, without regard to race, sex or religion.”

Staff Regulation 4.2 stated:

“The paramount consideration in the appointment, transfer, reassignment or promotion of staff members shall be the necessity of securing the highest standards of efficiency, competence and integrity. Due regard shall be paid to the importance of recruiting staff members on as wide a geographical basis as possible.”

Staff Rule 1050.4, which was to the same effect, added that due regard was to be given to the performance, qualifications and experience of the staff member concerned.

Staff Regulation 4.4 relevantly stated:

“Without prejudice to the inflow of fresh talent, posts shall be filled by reassignment of staff members, as defined by, and under conditions established by, the Director-General, in preference to other persons. [...]”

The following provisions in the Harmonized Selection Process, which in paragraph 1 referred to Staff Regulation 4.2, are also applicable to this aspect of the complaint. Among other things, they define the role of the Selection Panel, as well as that of “the appropriate decision maker”, in the selection process:

- Paragraph 13, under the rubric “Diversity” stated that “[t]he selection process will pay particular attention to the decisions/resolutions of the World Health Assembly on diversity. Due regard shall be paid to the Organization’s commitment to increasing the representation of women in the professional and higher categories, and to the importance of recruiting staff on as wide a geographical basis as possible.”
- Paragraph 14 relevantly stated that “WHO is committed to providing equality of access to employment, advancement and retention”.

- Paragraph 81 relevantly stated that “The Selection Panel discusses the overall results of the candidate assessment and identifies the most suitable candidates. [...]”.
- Paragraph 82 relevantly stated that “Through the ranking of candidates in different ranges, the Panel is responsible for finding suitably qualified candidates for the position. It is at this point that the Panel must take into consideration any additional assets of the suitable candidates that were identified during shortlisting. Candidates in the same range are considered of equal merit. Among candidates falling in the same range of merit, the internal candidate will have priority. Gender or geographical distribution will then be taken into account as subsidiary criteria, as applicable and subject to any other priority considerations which may be applied between internal candidates. [...]”.
- Paragraph 83 relevantly stated that “On this basis, the Selection Panel submits a final recommendation in a Selection Report [...] to the appropriate decision maker, recommending, where possible, the three most suitable candidates. [...]”.
- Paragraph 86 relevantly stated that “In the case of positions up to and including P6/D1 levels, the Selection Panel makes its recommendation in writing to the ADG of the cluster at headquarters [...]”.
- Paragraph 87 stated that “Where recommended candidates are of equal merit, the priority considerations set out in Paragraphs 10 to 14 will be applied.”
- Paragraph 88 stated that “Decision-makers have the same flexibility as the Selection Panel with reference to paragraph 82, and their decision may differ to that of the Selection Panel. Their decision must be fully documented and they will be accountable for that decision.”
- Additionally, paragraph 80 of Section III.4.2 of the eManual relevantly stated that the Selection Panel “makes its recommendation to the [ADG] of the division with the position concerned [...], with whom the decision shall rest”.

27. In its opinion, the GBA noted the case law concerning the discretionary nature of a decision to select a staff member, who is however entitled to have her or his application considered in good faith and in keeping with the basic rules of fair and open competition. The GBA further noted, among other things, that the Selection Panel recommended only the complainant to fill the advertised post, but that the ADG/UCN had the authority, by virtue of paragraph 80 of Section III.4.2 of the eManual and paragraph 88 of the Harmonized Selection Process, to decide on the final selection and whether to cancel the process. The GBA concluded, in effect, that the ADG/UCN's decision to cancel the recruitment process was not an unreasonable exercise of discretion, given that the Selection Panel had only recommended one candidate to him, and that by doing so the Selection Panel had limited the ADG/UCN's exercise of his discretion to determine who was the most qualified candidate pursuant to Staff Regulation 4.2. It was not therefore unreasonable that the ADG/UCN decided that a new selection process was necessary for whilst the establishment of a shortlist fell within the remit of the Selection Panel, the final decision rested with the ADG/UCN. The GBA further concluded that the reasons the ADG/UCN provided to justify the cancellation of the process were reasonable, which also satisfied the Tribunal's case law stated, for example, in consideration 7 of Judgment 1590, that reasons for a decision must be substantiated.

28. The Tribunal determines that, on the basis of the scheme and substance of the provisions reproduced in consideration 26 of this judgment, coupled with the reasons the ADG/UCN gave for his decision to cancel the selection process, the GBA's analysis and conclusion on this issue were open to it. Submitting the name of only one candidate to the ADG/UCN left him with no discretion to make the final decision to select a candidate (with a view giving effect to Staff Regulations 4.1, 4.2, 4.4 and Staff Rule 1050.4) which paragraphs 81-83 and paragraphs 86-88 of the Harmonized Selection Process contemplated. Accordingly, ground (i) is unfounded as the Director-General did not err by accepting the GBA's conclusion on this issue in the impugned decision.

By extension ground (ii) is also unfounded. The taking of a lawful decision does not provide a basis on which to hold that that decision is vitiated by arbitrariness or by abuse of authority, which in any event is not proved on the evidence. Ground (iii) is also unfounded. As the GBA correctly concluded, in effect, the complainant did not adduce evidence to prove that WHO violated its duty of good faith by taking the decision to cancel the selection process.

29. The complainant's request to be awarded moral damages for delay in the internal appeals procedure is rejected. Although, as she submits, the Director-General "inexplicably violated the statutory deadline set forth in GBA Rule 670, which obliges a final decision on the staff member's internal appeal to be notified to the staff member within 60 calendar days" and there were other delays, resulting in inordinate delay in the internal appeal procedure, the complainant has not articulated what impact the delay had on her (see, for example, Judgment 4147, consideration 13).

30. In the foregoing premises, the complaint will be dismissed insofar as the complainant therein challenges that aspect of the Director-General's decision to dismiss her internal appeal with respect to appeal No. 175 in the impugned decision.

31. Inasmuch as the complainant succeeds in part, she will be awarded 6,000 Swiss francs in costs in these proceedings.

DECISION

For the above reasons,

1. WHO shall pay the complainant 20,000 Swiss francs in moral damages in addition to the 7,000 Swiss francs the complainant was already paid.
2. WHO shall also pay the complainant 6,000 Swiss francs in costs.

3. The complaint is dismissed insofar as it challenges the impugned decision with respect to appeal No. 175.
4. All other claims are dismissed.

In witness of this judgment, adopted on 8 May 2025, Mr Michael F. Moore, Vice-President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Ms Hongyu Shen, Judge, sign below, as do I, René M. Vargas M., Registrar.

Delivered on 3 July 2025 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

HUGH A. RAWLINS

HONGYU SHEN

RENÉ M. VARGAS M.